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**Our File No.: 12301**  
**Attorneys for Plaintiff**

MARIA JUAREZ-ATILANO	UNITED STATES DISTRICT COURT
Plaintiffs,	CIVIL ACTION NO.
vs.	COMPLAINT & JURY DEMAND
UNITED STATES OF AMERICA	
Defendants.	

Plaintiff, Maria Juarez, complaining of defendant says:

THE PARTIES, JURISDICTION AND VENUE

1. The plaintiff, Maria Juarez resides at 3675 S. 23rd Street, Milwaukee, Wisconsin, 53221.
2. The defendant, United States of America is a party to this case as Dr. John Batich, M.D. of Ocean Health Initiatives, Inc., ("OHI") a Federally-Qualified Health Center provided care and treatment to Ms. Juarez-Atilano.
3. Venue is laid in this judicial district pursuant to 28 USC § 1391(e)(1)(B) as a substantial part of the events giving rise to this claim occurred at Kimball Medical Center which is located in the Township of Lakewood, County of Ocean and State of New Jersey.

FACTS COMMON TO ALL COUNTS

4. On or about June 11, 2012, Plaintiff, Maria Juarez-Atilano came under the care and treatment of OHI through its medical professionals for her pregnancy.

5. Ms. Juarez-Atilano had previously given birth via cesarian section at Kimball Medical Center on approximately June 1, 2008 with her care and treatment being provided by OHI through its medical professionals.

6. OHI through its medical professionals provided Ms. Juarez-Atilano care and treatment through and including her onset of labor on February 3, 2013 wherein she was admitted to Kimball Medical Center.

7. While at Kimball Medical Center Ms. Juarez-Atilano came under the care and treatment of OHI's medical professional, Dr. John Batich, M.D.

8. Dr. Batich initially elected to have and/or allow Ms. Jaurez-Atilano to undergo a trial of labor after cesarean delivery (TOLAC)/Vaginal birth after cesarean delivery (VBAC).

9. Due to complications including fetal bradycardia and possible uterine rupture an emergency cesarian section was performed by Dr. Batich and assistant, Dr. Flavius M. Thompson, M.D. wherein the baby, Brandon Oswaldo Silva was delivered and noted to be floppy, with no respiratory effort or movement and did not show any signs of life even twenty-two minutes into resuscitation and was then deemed deceased.

10. Plaintiff filed a Complaint against Dr. Batich on January 21, 2015 in the New Jersey Superior Court, Ocean Vicinage which was given docket number OCN-L-218-15.

11. On September 17, 2015 a Notice of Removal to federal court was filed by the United States Attorney's office along with a Substitution of the United States as Federal Defendant for Dr. Batich.

12. On September 24, 2015 the United States of America filed a Motion to Dismiss for Lack of Jurisdiction which was granted by Order dated November 20, 2015.

13. By letter dated November 23, 2015 and received in the Claims Office on November 24, 2015 the Plaintiff filed a Federal Tort Claims Notice.

14. The Department of Health and Human Services sent a letter dated January 4, 2016 requesting certain information which was supplied by letter dated February 23, 2016.

15. By letter dated July 19, 2016, the Department of Health and Human Services sent a notice of final determination denying Plaintiff's claim.

16. This matter is timely as suit is being filed within six (6) months of the final agency determination (28 U.S.C. § 2401(b)).

17. This matter is also timely pursuant to 28 U.S.C. § 2679(d)(5) which provides: "whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure to first present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if (A) the claim would have been timely had it been filed on the date of the underlying civil action was commenced, and (B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

#### COUNT ONE

18. The Plaintiff, Maria Juarez, at all times surrendered herself and her child to Dr. John Batich, M.D. of OHI a Federally-Qualified Health Center who according to federal statute the United States of America of America becomes the party to the claim, for care and treatment, on February 3, 2013 through February 5, 2013.

19. Dr. John Batich, M.D. of OHI was negligent in the care and treatment of Plaintiff, Maria Juarez during her labor and delivery of her child including observation and diagnosis of both plaintiff-mother Maria Juarez and her child, and deviated from the standard of obstetrical care

and failed to properly evaluate both patients resulting in an erroneous uterine rupture and fetal demise, among other things.

20. Dr. John Batich, M.D. of OHI was negligent in the care, observation and treatment of both plaintiff-mother Maria Juarez and the Juarez child (deceased), in failing to properly evaluate both Ms. Juarez's probability of success and her underlying risk for uterine rupture and allow a life threatening condition which conduct was a deviation from the standard of care which ultimately caused Ms. Juarez's uterine rupture and the demise of her child.

21. The negligence of Dr. Batich in his failure to properly test, treat, observe and/or diagnoses proximately caused Ms. Juarez and her child to sustain permanent injuries.

22. As a direct and proximate result of the negligence of Dr. Batich in his failure to properly test, treat, observe and/or diagnose Ms. Juarez's condition, caused Plaintiff to sustain severe and diverse personal injuries for which she has incurred and will continue to incur medical expenses; loss of income, pain and suffering, discomfort, inconvenience, emotional distress, disabilities and restrictions on normal daily activities, loss of quality and enjoyment of life's pleasures, the demise of her child, and such further damages as will be proven at the time of trial.

**WHEREFORE**, Plaintiff, Maria Juarez-Atilano demands judgment on this Count against the defendant, United States of America, its agents, servants, and/or employees herein, jointly and severally and alternatively, for compensatory damages in the sum of \$10,000,000.00 and interest, attorney's fees, cost of suit and such other and further relief as the Court may deem just and appropriate.

**DEMAND FOR JURY TRIAL**

Please take notice that Plaintiff, Maria-Juarez-Atilano hereby demands trial by jury as to all issues raised by the within pleadings.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designate Robert M. Anderson, Esq. as Trial Counsel.

Dated: December 23, 2016

/s SCOTT M. McPHERSON

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